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State v. Murphy Appellant's Reply Brief Dckt. 41634

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 41634
)	
v.)	ADA COUNTY NO. CR 2010-17464
)	
DARCY DEAN MURPHY,)	REPLY BRIEF
)	
Defendant-Appellant.)	
<hr/>		

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

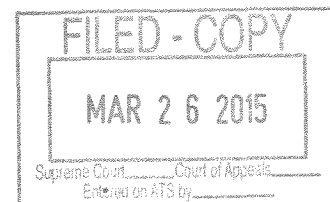
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STATEMENT OF THE CASE

Nature of the Case

Darcy Murphy appeals, contending that, under the relevant statutes and case law, he should have been given credit for the periods of time he was incarcerated awaiting the disposition of allegations that he violated the terms of his drug court program, and so, had violated his probation by not successfully completing drug court.

The State responds with four arguments: (1) that considering discharge from drug court is different than considering revocation of probation, and therefore, credit is not appropriately awarded while a person is arrested pending discharge from drug court. Rather, incarceration pending discharge from drug court constitutes discretionary jail time served as a condition of probation; (2) the drug court staff's written reports alleging violations of the terms of drug court are not the functional equivalent of bench warrants; (3) a person cannot properly be considered awaiting disposition on an allegation of probation violation until the formal motion for probation violation is filed; and (4) the record is not sufficiently clear to reverse the district court's denial of credit. (See Resp. Br., pp.8-11.)

All four of the State's arguments are mistaken. They all ignore the governing statutes and established precedent, and they are also inconsistent with the evidence in the record. Periods of incarceration while awaiting the disposition of allegations that a person has violated the terms of his release, which include both allegations that he violated the terms of the drug court program and allegations that he violated the terms of his probation, cannot be properly described as a voluntary period of incarceration served as a condition of release. Therefore, arrests based on written reports of

violation, which do constitute agent's warrants, trigger the credit statutes. Furthermore, where the record demonstrates that a defendant is entitled to credit for a particular period of time, but is not sufficiently clear for the appellate court to determine exactly how much time should have been credited, the proper result is not to affirm the erroneous denial of credit. Rather, in that scenario, the case should be remanded for a proper calculation of credit.

Thus, when the rules from the relevant statutes and case law are properly applied to this case, it is clear that Mr. Murphy should have been awarded credit for the two periods he was incarcerated awaiting disposition on the allegations that he violated the terms of drug court as well as the terms of his probation. As such, this Court should reverse the district court's order denying his motion for credit and remand this case so that Mr. Murphy may be given the credit to which he is due.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Murphy's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred in denying Mr. Murphy's motion for credit for time served.

ARGUMENT

The District Court Erred In Denying Mr. Murphy's Motion For Credit For Time Served

- A. There Is No Legally-Significant Difference Between Incarceration On Alleged Violations Of The Conditions Of Drug Court And Alleged Violations Of The Terms Of Probation; Such Periods Of Incarceration Are Not Conditions Of Probation

The State asserts that an arrest based on allegations that the person has violated the conditions of drug court is different than an arrest based on an allegation that the person has violated the terms of probation. (See Resp. Br., pp.8-11.) That argument is wrong for several reasons.

First, it ignores the fact that Mr. Murphy was facing allegations that he had violated the terms of drug court *as well as* allegations that he had violated the terms of his probation. This is not surprising, as one of the terms of Mr. Murphy's probation was that "[t]he probation[er] shall successfully complete the following programs . . . Drug Court." (Supp. R., p.86 (emphasis from original).) Thus, an allegation that Mr. Murphy had failed to adhere to the terms of drug court, such that he was being considered for termination from that program, naturally incorporates an allegation of probation violation.

In fact, that is exactly what happened to Mr. Murphy in December 2011. On December 13, 2011, the drug court staff alleged that he had violated the terms of drug court and recommended his arrest. (Supp. PSI, p.140.) He was arrested based on these allegations. (See Supp. PSI, p.139 (January 10, 2012, progress report indicating Mr. Murphy was in custody as of at least December 14, 2011).) The State followed up by filing a motion for bench warrant for violation of probation on December 30, 2011,

alleging that Mr. Murphy had violated the terms of probation by “[f]ailing to successfully complete the Ada County Drug Court.” (Supp. R., pp.90-91.) Therefore, during that period of incarceration, Mr. Murphy was awaiting disposition on allegations of violation of both his drug court program and his probation.

Similarly, the allegations in the January 15, 2013, progress report served as the basis for discharging him from drug court as well as revoking his probation. This conclusion is evident from the fact that the State only filed a motion for discharge from drug court following the January 15, 2013, progress report, (*see generally* Supp. R., pp.106-16), and yet, Mr. Murphy admitted violating both the terms of drug court and the terms of his probation. (Supp. Tr., p.5, L.3 - p.12, L.10 (admit/deny hearing where Mr. Murphy was “admitting to violating his probation as well as violating his drug court agreement”).) Based on those admissions flowing from the same set of allegations, the district court ordered that Mr. Murphy be discharged from drug court and revoked his probation. (Supp. R., pp.112, 114.) Therefore, during the period of incarceration preceding those orders, Mr. Murphy was awaiting disposition on allegations that he violated the terms of both his drug court program and his probation.

As a result, the distinction the State is seeking to draw in this case is disingenuous at best, since the facts reveal both sides of the distinction are present in this case. Regardless of whether the issue is framed as an allegation of violating the terms of drug court or as an allegation of violating the terms of probation, Mr. Murphy is entitled to credit for the periods of incarceration during which he was awaiting disposition on those allegations.

At any rate, the State's distinction is a distinction without legal significance. The focus of whether credit for post-judgment incarceration during a period of probation is properly awarded is on whether that incarceration was voluntary – whether the person voluntarily surrendered his freedom in the short term in exchange for the opportunity to be released on probation. *State v. Banks*, 121 Idaho 608, 610 (1992) (“Accordingly, he is not entitled to credit for time he *voluntarily* surrendered to gain probation.”) (emphasis added).

The reason incarceration pending a potential discharge or revocation is not voluntary can be seen by comparing the prospective impact of incarceration pending potential discharge from the program with the prospective impact of discretionary time. Discretionary time is ordered as an intermediary sanction for a failure to adhere to the terms of probation, but the prospective impact of that sort of incarceration is that the defendant will remain on probation after he serves the discretionary time. Thus, in that situation, the defendant agrees to allow his liberty to be restricted in exchange for being able to remain on probation. *See Banks*, 121 Idaho at 610.

However, when the prospective impact is that the defendant will be removed from probation, that same agreement does not exist. The defendant will not receive the benefit of continued probation *in exchange* for agreeing to be incarcerated. Rather, he is on the verge of *losing* his previously-negotiated benefit. Thus, in that scenario, where the defendant is facing a potential loss of his benefit, the incarceration is involuntary and cannot be considered to be a condition of probation: “[I]f a defendant was arrested for probation violations and spent time in confinement awaiting disposition of the alleged violations, that incarceration must be credited against the underlying sentence because

it was not served voluntarily as a condition of probation.” *State v. Albertson*, 135 Idaho 723, 725 (Ct. App. 2001); *cf. State v. Lively*, 131 Idaho 279, 279-80 (Ct. App. 1998). Therefore, when a person is arrested based on allegations that he has violated the terms of his release and he is facing removal from a treatment program and removal from that program will constitute a violation of his probation, that incarceration cannot be said to be voluntary under the terms of probation – he did not agree to the incarceration in order to remain on probation.

In fact, this very distinction is evident in the record in this case. On October 6, 2011, Mr. Murphy was ordered to appear because he missed a scheduled breathalyzer test without an evident excuse for his absence. (Supp. R., p.87.) As a consequence of that unexcused absence, he was ordered to serve two days in custody on the Sheriff’s Inmate Labor Detail. (Supp. R., p.89.) However, it is clear that he was expected to remain on probation after serving that discretionary time, as he was ordered to return to drug court the following week. (Supp. R., p.89.) Contrarily, when the drug court staff alleged that Mr. Murphy had violated various conditions of the drug court program, the staff recommended his incarceration while they determined whether or not to discharge him from the program. (See, e.g., Supp. PSI, p.140.) At that point, there was no expectation that he would remain in the program, and thus, on probation.¹ Thus, that period of incarceration could not properly be classified as discretionary time to which he

¹ As the State points out, it is conceivable that Mr. Murphy might have been discharged from the drug court program, and yet, still been allowed to remain on probation. (See Resp. Br., p.10.) However, because the State had also filed a motion for bench warrant for probation violation based on the allegation that Mr. Murphy had not completed the drug court program (Supp. R., pp.90-91), the fact that such a possibility exists does not mean that Mr. Murphy was not entitled to credit for the time he was incarcerated awaiting disposition of those allegations.

agreed as a term of his probation since Mr. Murphy did not agree to that restriction of his liberty with the understanding that he would remain on probation after it was over. *See Albertson*, 135 Idaho at 725; *Lively*, 131 Idaho at 279-80.

This comparison reveals another difference between discretionary time and incarceration pending disposition on alleged violations of the conditions of release: discretionary time is ordered for a fixed period of time (see Supp. R., p.89 (ordering **two days** of discretionary time be served), whereas incarceration pending disposition on alleged violations does not have a fixed duration (see Supp. PSI, p.140 (recommending that Mr. Murphy be arrested until it was determined whether he should be allowed to remain in the drug court program)).² Since the periods of incarceration based on the December 13, 2011, and January 15, 2013, progress reports did not have a fixed duration, they did not constitute discretionary jail time. Therefore, they were not served as a condition of Mr. Murphy's probation. As a result, he should have received credit for the periods of incarceration following the allegations of violation in the December 13, 2011, and January 15, 2013, progress reports.

At any rate, the State's argument – that credit should not be awarded because the incarceration was a condition of probation – is becoming outdated. Both houses of the Idaho Legislature have passed H.B. 64, which would afford probationers credit even for time served as a condition of probation, and that credit would begin accruing upon

² Considering incarceration while the person is awaiting disposition of allegations of violation to be the same as discretionary time would cause even more issues, including potential due process issues, if it takes longer to resolve the allegations than remains in the discretionary time authorized by the district court.

service of a bench warrant.³ Idaho Legislature, <http://www.legislature.idaho.gov/legislation/2015/H0064.htm> (noting the house passed H.B. 64 on February 16, 2015, by a vote of 69-0-1, and the Senate passed H.B. 64 on March 17, 2015, by a vote of 34-0-1) (last visited March 18, 2015). Thus, the Legislature has recognized the problem with denying credit for incarceration served as a condition of probation and is moving to correct it legislatively.

Furthermore, the State's distinction would only muddy the rules regarding awards of credit for time served by drawing an arbitrary line between different types of probationers based on the type of programs they are ordered to attend. (See Resp. Br., pp.8-11.) The effect of the State's argument is that the traditional probationer who is alleged to have violated his probation would get credit for the pre-disposition incarceration he serves, while the probationer who is also participating in drug court would not get similar credit for the simple reason that his alleged violations were specific to the drug court program.

Apart from being inconsistent with precedent, *see, e.g., Albertson*, 135 Idaho at 725, the State's argument raises concerns under the Equal Protection Clause. That distinction would treat like-situated individuals in vastly disproportionate ways. As the Idaho Supreme Court has held, "selective or discriminatory enforcement of that statute or regulation may amount to a violation under either the Idaho or United States Constitutions, but only if the challenger shows a deliberate plan of discrimination based upon some improper motive like race, sex, religion, **or some other arbitrary**

³ As agent's warrants remain the functional equivalent of bench warrants, credit would still accrue from service of an agent's warrant as well. *See, e.g., State v. Covert*, 143 Idaho 169, 170-71 (Ct. App. 2006).

classification.” *Anderson v. Spalding*, 137 Idaho 509, 514 (2001) (emphasis added). A distinction is arbitrary and fails to pass even rational basis review if the “classification is based solely on reasons totally unrelated to the pursuit of the state’s goals and only if no grounds can be advanced to justify those goals.” *Madison v. Craven*, 141 Idaho 45, 48 (Ct. App. 2005).

The goal of probation is to promote rehabilitation in defendants. *State v. Dana*, 137 Idaho 6, 8 (2001). Thus, when it orders the defendant to complete drug court as part of that term of probation, it is trying to forward the goal of rehabilitation. The goal in awarding credit is to ensure the defendant serves only the time ordered on a given offense. See *State v. Moore*, 156 Idaho 7, 20-21 (Ct. App. 2014) (holding that the district court is duty-bound to give credit for all the time the defendant is actually incarcerated on the instant offense). The State has not articulated any rational reason for drawing a distinction between traditional probationers and probationers in drug court in terms of who among them should get credit when they are arrested on allegations that they violated the terms of their release. This is unsurprising as there is no rational reason that relates to the goals of probationary release and awarding credit that would justify treating probationers differently based simply on the nature of the programs they were ordered to complete while on release. Therefore, the State’s proposed distinction would fail to pass even a rational basis review, and so, if adopted, would violate the equal protection provisions of both the Idaho and United States Constitutions.

As a result, this Court should reject the State’s misguided attempt to continue to draw these meaningless distinctions in regard to awarding credit for time a person is actually incarcerated. The governing statutes and case law, as well as the facts in this

case, make it clear the State's proposed distinction is baseless. Mr. Murphy should have received credit for the time he was incarcerated awaiting disposition on the allegations that he violated the terms of drug court and his probation.

B. Pursuant To Statute, The Drug Court Staff's Written Reports Alleging Violations Of The Conditions Of Drug Court Constitute Agent's Warrants, And Thus, Are The Functional Equivalent Of Bench Warrants

Mr. Murphy was arrested based on the written reports of the drug court staff which alleged that he violated the terms of his drug court program. The State contends that these reports are not the functional equivalent of bench warrants, and so, do not trigger the credit statutes. (Resp. Br., p.10 ("While termination from the drug court program may result in the revocation of probation that does not mean . . . that the drug court staff's recommendations or reports relating to jail time, regardless of the basis for the recommendation, is the functional equivalent of a bench warrant for purposes of I.C. § 19-2603.)) The State's argument is contradicted by the definition the Legislature has given for agent's warrants:

(1) Any parole or probation officer may arrest a parolee, probationer, or any person under drug court or mental health court supervision without a warrant, or may deputize any other officer with power of arrest to do so, by giving such officer **a written statement hereafter referred to as an agent's warrant, setting forth that the parolee, probationer, or person under drug court or mental health court supervision has, in the judgment of said parole or probation officer, violated the conditions of drug court or mental health court or conditions of his parole or probation.**

(2) Such written statement or agent's warrant, delivered with the parolee, probationer or person under drug court or mental health court supervision by the arresting officer to the official in charge of . . . the county jail or place of detention, shall be sufficient warrant for the detention of the probationer, parolee, or person under drug court or mental health court supervision.

I.C. § 20-227(1)-(2) (emphasis added).

The progress reports in this case are written statements setting forth that Mr. Murphy, who is under drug court supervision, has, in the opinion of the supervising personnel,⁴ violated the conditions of drug court. Specifically, the written statement in the December 13, 2011, progress report asserts that Mr. Murphy did not have his homework as required and was unexcused from Rise and Shine facility, and so, those statements allege a violation of the conditions of his drug court program. (Supp. PSI, p.140.) Similarly, the written statement in the January 15, 2013, progress report asserts that Mr. Murphy admitted that he had forgotten his green card and had not been attending meetings as required, and so, those statements allege a violation of the conditions of his drug court program. (Supp. PSI, p.126.) As a result, those written statements constitute agent's warrants under I.C. § 20-227(1).

Agent's warrants are the functional equivalent of bench warrants. See, e.g., *Covert*, 143 Idaho at 170-71. As a result, Mr. Murphy's arrests based on those written statements alleging violations of the terms of drug court were based on the functional equivalent of a bench warrant. See *id.* Therefore, he is entitled to credit for the time he was incarcerated based on the allegations in those agent's warrants. *Id.* As such, this Court should reverse the district court's erroneous order denying him credit for those periods of incarceration.

⁴ Mr. Murphy recognizes that the drug court staff may not include a probation officer, but, as the staff members are supervising the probationer's treatment program, they fulfill essentially the same supervisory role for a probationer participating in the drug court program that a probation officer fills for a traditional probationer. Therefore, the written reports from drug staff identifying a violation of the terms of drug court are the same as those that a probation officer would file in regard to a traditional probationer who violates the terms of his probation.

C. A Person Is Entitled To Credit From The Date The He Is Arrested On Allegations He Has Violated The Terms Of Release; The Date The Formal Motion Is Filed With The Court Is Irrelevant

The State also asserts that, even if credit were properly awarded for the periods of incarceration Mr. Murphy has identified, that credit could only start accruing from the date that the State filed the formal motion for probation violation: “[Mr.] Murphy could not be ‘incarcerated awaiting disposition on pending allegations of probation violation’ on December 13, 2011, when the allegations were not filed until 17 days later.” (Resp. Br., p.9 n.5.) The State is mistaken.

First, the credit statute and relevant case law are clear that credit is calculated from the date of service of a bench warrant or its functional equivalent. See, e.g., I.C. § 19-2603; *Covert*, 143 Idaho at 170-71; *Albertson*, 135 Idaho at 725; *Lively*, 131 Idaho at 279-80; *State v. Buys*, 129 Idaho 122 (Ct. App. 1996). The State has not argued that the language of the statute is ambiguous, and so, is open to interpretation. See *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 895-96 (2011) (holding that, where the language of a statute is unambiguous, the courts must give effect to the plain meaning of the unambiguous language). The State also has not argued that the case law on point is manifestly wrong, unjust or unwise, or prevents the application of obvious principles of law in this regard, and so, should be overturned. See *Western Home Transport, Inc. v. Idaho Dep’t of Labor*, 155 Idaho 950, 953 (2014) (reiterating the standard for departing from controlling precedent). Therefore, the State has not presented a justification for disregarding the rule that the calculation of credit begins from the service of the warrant. As such, the date the formal motion alleging a violation is irrelevant to the calculation of credit.

Second, adopting the State's position would allow the prosecutor or probation officer to maliciously delay filing a formal report of violation in order to deprive an incarcerated probationer of credit for time served to which he is otherwise entitled. Such a system, where the prosecutor or probation officer can play games to unjustifiably increase the amount of time a person is deprived of his liberty is precarious at best and unconstitutional at worst. Therefore, it should be rejected.

The flaw in the State's argument is made clear by looking at it through the factual scenario in *Covert*:

On January 25, 2005, Covert's probation officer discovered marijuana and a methamphetamine pipe in Covert's car and other paraphernalia in Covert's bedroom. The probation officer requested the assistance of a police officer, who arrested Covert for possession of a controlled substance and possession of drug paraphernalia. Covert was also arrested at the same time on an agent's warrant. On January 27, the probation officer filed a report alleging Covert had violated the terms of his probation. The probation officer indicated that Covert was being held in jail on an agent's warrant and requested that the district court enter a bench warrant to replace the agent's warrant. On February 2, the district court issued a bench warrant, which was served on Covert on February 7.

Covert, 143 Idaho at 170. Under the State's argument, Mr. Covert would not have begun accruing credit until at least January 27, 2005, because that is when the report of allegations of violation were filed. (See Resp. Br., p.9 n.5.) However, in that scenario, Mr. Covert would be deprived of credit for two days he was actually in custody. This is inconsistent with the fundamental principle of awarding credit for time served: "**any** period of incarceration, whether before or after the entry of judgment and imposition of sentence, counts against the sentence of imprisonment so long as the incarceration is attributable to the offense or an included offense for which judgment was entered." *Buys*, 129 Idaho at 126 (emphasis added). Therefore, the *Covert* Court

implicitly rejected the State's proposed reading of the credit rules, holding instead that Mr. Covert was entitled to credit starting on January 25, 2005, because that is when Mr. Covert began being detained in the instant case. *Id.* at 170-71.

Thus, credit is appropriately counted from the date the bench warrant or its functional equivalent is served, not the date the formal allegations are filed. *See also* I.C. § 19-2603. In Mr. Murphy's case, the functional equivalents of bench warrants were the drug court staff's written reports asserting that he had violated the terms and conditions of drug court. I.C. § 20-227. Therefore, Mr. Murphy is entitled to credit from the date he was arrested based on those agent's warrants, not the date the formal allegations were filed with the district court.

D. The Record Is Sufficiently Clear To Show Mr. Murphy Is Entitled To The Credit He Claims

The State contends that, because there is no indication that the January 15, 2013, progress report was recommending Mr. Murphy's arrest (as compared to the December 13, 2011, progress report), the record is not sufficiently clear to justify awarding credit based on that report. (Resp. Br., p.11.) As discussed *supra*, all that is necessary to validly arrest a person who is under drug court supervision is a written report that the person on drug court supervision has violated the conditions of drug court. I.C. § 20-227(1). Therefore, the January 15, 2013, progress report, which asserts in writing that Mr. Murphy had not adhered to the terms of drug court, is an agent's warrant. Thus, if he was arrested based on that report, he is entitled to credit for that period of incarceration.

The record indicates Mr. Murphy was arrested based on the allegations in the January 15, 2013, progress report. The January 29, 2013, progress report reveals that Mr. Murphy was in custody as of at least January 20, 2013. (Supp. PSI, p.125.) It also reveals that the reason he was in custody was that he “has been recommended for discharge.” (Supp. PSI, p.125.) That indicates Mr. Murphy was arrested based on the January 15, 2013, progress report, which expressly recommended that Mr. Murphy be discharged from the program based on its allegations that he had not complied with the terms of drug court. (Supp. PSI, p.126.) Therefore, there is sufficient evidence to show that Mr. Murphy was arrested based on the January 15, 2013, progress report, and so, he is entitled to credit for that period of incarceration.

Even if the State is correct and the record is not sufficiently clear to determine exactly how much credit Mr. Murphy should have received, the State’s position – that such a shortcoming in the record means this Court should affirm the district court’s denial of all credit for time served – is still erroneous. As the Court of Appeals has held, when the record establishes that the defendant is entitled to credit, but it is not sufficiently clear for the appellate court to say exactly how much credit the defendant should have received, the proper result is to remand the case to the district court for a proper calculation of credit. *State v. Chilton*, 116 Idaho 274, 276 (Ct. App. 1989); see also *State v. Bitkoff*, 157 Idaho 410, 414-15 (Ct. App. 2014) (remanding a claim for credit for time served for additional fact finding because, if the defendant’s claim on appeal were factually correct, he would be entitled to the credit he was claiming). The reason remand is the proper result in such situations is that credit awards are mandatory. *Moore*, 156 Idaho at 20-21 (specifically discussing the district court’s

obligations in the pre-judgment credit context). The district court must give credit for all the time the defendant was actually incarcerated and is duty-bound to make an accurate calculation of the time to which the defendant is entitled. *Id.*

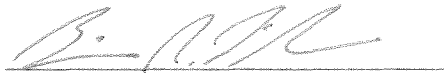
The record shows that Mr. Murphy is entitled to credit for the period of time he was incarcerated based on the December 13, 2011, and January 15, 2013, progress reports. Therefore, if this Court is unable to determine exactly how much credit he must receive for those periods of incarceration, the proper remedy is still to reverse the order denying credit. The district court's order denying all credit for those periods of incarceration is still incompatible with the its statutorily-established duty to properly calculate and award credit for the time Mr. Murphy was actually incarcerated in this case. Thus, this Court should, at least, remand this case so that the district court can fulfill its duty and make a proper calculation of the time to which Mr. Murphy is entitled.

However, as discussed in detail in the Appellant's Brief, the record shows that Mr. Murphy was entitled to 68 days of credit for the two periods of incarceration he served awaiting disposition of the allegations that he violated the terms of his release (December 13, 2011, through February 22, 2012, and January 15, 2013, through February 25, 2013). (App. Br., pp.6-14.) As such, this Court should remand this case so that an order may be entered awarding Mr. Murphy credit for that period of time he was actually incarcerated in this case.

CONCLUSION

Mr. Murphy respectfully requests that this Court vacate the district court's order denying his motion for credit for time served and remand this case for an order granting him credit for 68 days of time served. Alternatively, he requests that this Court remand this case for a proper calculation of the credit for time served to which Mr. Murphy is entitled.

DATED this _____ day of March, 2015.

A handwritten signature in dark ink, appearing to read "B. R. Dickson", is written over a horizontal line.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of March, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DARCY DEAN MURPHY
INMATE #99111
SICI
PO BOX 8509
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CHERI C COPSEY
DISTRICT COURT JUDGE
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